



January 27, 2016

Via Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Telecommunications Relay Service and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123; *Misuse of Internet Protocol (IP) Captioned Telephone Service*, CG Docket No. 13-24

Dear Ms. Dortch:

On November 16, 2015, we submitted a notice of ex parte on behalf of CaptionCall, LLC (“CaptionCall”), wherein we indicated that CaptionCall is withdrawing its proposal to implement a price cap rate-setting methodology for Internet Protocol Captioned Telephone Service (“IP CTS”).¹ Below, we explain why CaptionCall, an affiliate of Sorenson Communications, Inc. (“Sorenson”), now opposes any departure from the Multistate Average Rate Structure (“MARS”) methodology that the Commission currently uses to set IP CTS rates.

Sorenson and CaptionCall have consistently maintained that adopting market-based rates is the best mechanism for the Commission to ensure that TRS providers fulfill the ADA’s mandate that all deaf and hard-of-hearing Americans gain access to functionally equivalent telephone services. Market-based rates ensure that providers, who must constantly adapt to competitive pressures, operate their services in the most efficient manner possible, without eliminating costs necessary for providers to offer essential elements of TRS.

Historically, through the MARS methodology, the Commission has relied on market-based rates to set IP CTS provider compensation. As detailed in CaptionCall’s Petition for Rulemaking, MARS over time has developed flaws that have caused the rate to increase steadily for the past several years.² To alleviate this upward pressure on rates, CaptionCall proposed a price-cap mechanism, which would bring the rates back down to levels that existed before the escalations began, and which would thereafter closely approximate market-based IP CTS rates.

¹ See Letter from John T. Nakahata, Counsel to CaptionCall, LLC, to Marlene H. Dortch, FCC Secretary, CG Docket Nos. 13-24, 03-123 (Nov. 16, 2015).

² See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Petition for Rulemaking (filed Feb. 20, 2013).

CaptionCall's price-cap proposal, however, has been pending before the Commission for nearly three years. During that time, the proposal has received minimal attention from the Commission. The price-cap proposal has also received no support from other providers—though MARS continues to receive strong support from the industry.

Simultaneously, the Commission has continued to pursue rate-of-return style regulation, based on “allowable costs,” in other forms of TRS, even under what were nominally price cap mechanisms. For example, in 2007, the Commission established a price cap for IP Relay,³ and the Commission reauthorized the price cap in 2010.⁴ But in 2013, the Commission reset the IP Relay base rate based on an “allowable cost” calculation,⁵ which was artificially lowered because of the largest IP Relay provider's decision to “offshore” the majority of its communications assistants. The Commission compounded that problem by establishing an X-factor based on historical declines in “allowable costs,” which reflected the same offshoring. As a result, the IP Relay rate dropped nearly 20% in a single year, with rules mandating further annual 6% reductions. Prior to these rate changes, there were six IP Relay providers. Afterward, there was only one remaining provider, and that provider required an IP Relay rate increase to continue offering the service. Indeed, Sorenson itself was forced to exit the market solely on account of these rate changes. Furthermore, in VRS, the Commission has allowed steep rate cuts, based on flawed “allowable cost” calculations, to continue squeezing the capabilities of all providers, not just the very smallest and least efficient VRS providers. And now it is using these same flawed “allowable cost” calculations to propose further, blatant monopsony price discrimination.

Sorenson and CaptionCall have steadfastly opposed the application of a “rate of return” methodology, based on “allowable costs,” for setting TRS rates. Rate-of-return methodologies are destructive for all relay services, including IP CTS. Indeed, in other contexts, the Commission has largely abandoned rate-of-return because it rewards inefficiency and discourages innovation. These problems are particularly acute for relay services, where the largest costs are labor expenses, where providers have little booked capital on which to earn returns, and where providers create access technology that allows consumers to actually use the service without having to expend hundreds of dollars in computer equipment that hearing users do not have to expend to be able to use the telephone. As providers have repeatedly pointed out and as is continually reaffirmed by the Administrator's calculations, a rate-of-return approach applied to labor-intensive TRS services yields margins of only about 1% over the allowable

³ *Telecommunications Relay Services and Speech-to-Speech for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd. 20140, ¶ 43 (CGB 2007)

⁴ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 25 FCC Rcd 8689, 8700, ¶¶ 25-26 (CGB 2010)

⁵ *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 28 FCC Rcd 9219, 9222 ¶ 12 (CGB 2013)

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costs—far too little to sustain quality TRS service and any private sector innovation around these services and their delivery. Moreover, the Commission has historically excluded cost categories, such as R&D and actual taxes, that are essential for the operation of any business, including relay services, which means these actual expenses more than eat up even the paltry 1% margin that the rate-of-return formula permits.

IP CTS remains the only relay service that does not incorporate the deeply flawed “allowable-cost” concept into its rate-setting methodology, and CaptionCall can no longer support a departure from MARS, which, though not flawless, is ostensibly based on market-based rates.

Sincerely,

A handwritten signature in black ink, appearing to read "John T. Nakahata". The signature is fluid and cursive, with a long horizontal stroke at the end.

John T. Nakahata

Counsel for CaptionCall, LLC

cc: Alison Kutler
Karen Peltz-Strauss
Robert Aldrich
Gregory Hlibok
Eliot Greenwald
Darryl Cooper